

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2683 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ABDULKARIM ISHAQ SAMEJA

Versus

G S R T CORPORATION

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Appearance:

MR HK RATHOD for Petitioner

MR YS LAKHANI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 13/07/98

ORAL JUDGEMENT

#. Mr.Devnani, learned advocate appearing on behalf of Mr.Yogesh Lakhaani, Learned Advocate for the respondent waives service of rule. The petitioner Shri Abdulkarim Ishaq Sameja was working as Art.C.Body fitter under the Bhuj Division of Gujarat State Road Transport Corporation in the year 1982. From Bhuj Division, he was transferred to Nakhantrana depot but he didn't report on his duty from 30th July,1982 to 20th June,1989. Because

of his said absence from duty nearly for 7 years, a chargesheet was sent against him for holding departmental inquiry and thereafter the departmental inquiry was held. In the departmental inquiry the statement of the petitioner was also recorded. The inquiry officer found that there was no justification for remaining absent from duty for nearly 7 years, therefore taking into consideration the same fact and other circumstances, the appointing authority had dismissed him from service by passing the dismissal order on 30th July,1982.

#. The petitioner thereafter raised a disputed about his dismissal nearly after 7 years by giving his application on 20th June,1989. On raising industrial dispute, a reference was made to the labour court of Rajkot bearing No.1276/89 and the labour court found that there was delay in making a reference of nearly 7 year which indicates that the workmen was not at all interested in the job. It also found that there was no justification for his remaining absent from duty therefore in these circumstances, the order of dismissal was quite correct and there was no justification to interfere with the same and therefore the said reference is rejected on 13-7-1993.

#. The Petitioner has filed this present petition on 30th March,1998, thus he has also come again to challenge the award of the labour court nearly 5 years after its dismissal. The learned advocate for the petitioner has taken me through order passed by the learned labour court. In his order, learned labour court has recorded deposition made by the present petitioner during the departmental inquiry against him in Para-5 on Page-14. If the said statement of the present petitioner is considered, it would be quite clear that the petitioner has admitted his absence from the duty and he has tried to explain his absence from duties by say that he was absent because he was transferred from the divisional workshop to Nakhatrana depot and he has further stated that there he was not provided with necessary tools and was also given mental torture. But if the statements of the petitioner is considered then it would be quite clear that the petitioner had not shown any representations for his misconduct. Had not also shown his willingness and readiness to improve his behavior and his conduct. The learned labour court has also stated that there was no material also to support his claim that he was mentally tortured at the new place of his transfer. Therefore taking into consideration this conduct of him along with the fact that he has not challenged for his dismissal for nearly 7 years, the learned labour court came to the

conclusion that the petitioner was not at all interested in his job. Transfer on an employee is an incident of employment and merely because of the transfer if the employee happen to remain absent then that absence could not be justified but as stated earlier from the statement made by the petitioner during the departmental inquiry does not intend or show that he was really representing for his misconduct or that he was ready and willing to show improvement in his conduct so as to give him further opportunity to induct in the job. Therefore in these circumstances, if the labour court thought that the action taken by the employer of dismissing him from service was quite justified and proper then it is very difficult for this court to interfere with the said finding of the labour court as the same could not be said to be either perverse or grossly erroneous. After all, it is finding of facts recorded by the labour court on appreciation of evidence. The said finding of the labour court supported by further conduct of the petitioner who has come to challenge the said award of labour court nearly after 5 years. Therefore in these circumstances, I held that present petition will have to be dismissed with no order as to cost. Rule is discharged.

Date : 13-7-1998 (S.D.Pandit,J.)

(KPP)